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No.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

R. R. GABLE, INC., a CALIFORNIA REAL ESTATE CORPORATION,
Petitioner,

v.

DALE BURROWS and LYNN BURROWS, husband and wife,
Respondents.

WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF WASHINGTON
DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the full faith and credit clause of the United States Constitution, art. IV, § 1, permits the state of Washington to refuse recognition and enforcement of a valid California judgment that was rendered in full compliance with the California Rules of Civil Procedure.

II. Whether a collateral attack upon a valid California judgment is permissible when a Washington court which is requested to enforce the judgment determines that the California Rules of Civil Procedure are invalid, and therefore decides that the California judgment is invalid and should be vacated.

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OPINIONS BELOW

The Findings of Fact and Conclusions of Law, as well as the Judgment and Order Vacating Foreign Judgment, of the Washington Superior Court for Island County are unreported and are included in the Appendix at A-3 to A-13. The opinion of the Washington Court of Appeals, Division One, is reported at 32 Wash. App. 749, 649 P.2d 177 (1982), and is also reproduced in the Appendix at A-15 to A-26. The order of the Washington Court of Appeals denying the motion for reconsideration is set forth at A-27. The order of the Supreme Court of Washington denying the petition for review is included in the Appendix at A-29. The order extending the time for filing this Petition for Writ of Certiorari with this Court, signed by Justice Rehnquist, appears at A-31.

JURISDICTION

The judgment of the Washington Court of Appeals, Division One, affirming the Washington Superior Court's refusal to enforce the petitioner's California judgment, was entered on August 4, 1982. The court of appeals denied a timely filed motion for reconsideration on September 9, 1982. Thereafter, on December 3, 1982, the Supreme Court of Washington denied a petition for review. On February 17, 1983, Justice Rehnquist of the United States Supreme Court signed an order extending the time for filing this Petition for Writ of Certiorari to and including April 3, 1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3) (1976).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. art. IV, § 1:

> Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

U.S. Const. amend. XIV, § 1:

> No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . .

28 U.S.C. § 1738 (1976):

> The records and judicial proceedings of any court of any . . . State, Territory or Possession [of the United States] . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

This petition asks this Court to consider whether the Washington Court of Appeals erred in holding that a California judgment, rendered in complete conformity with the rules of California procedure by a court that had jurisdiction of both the subject matter and the parties to the suit, was not entitled to full faith and credit in the State of Washington. The Washington Court of Appeals interpreted the established "due-process" exception to the full faith and credit requirement of article IV, § 1 of the United States Constitution as conferring authority upon it to inquire into the constitutionality of procedural aspects of the California suit beyond the issue of jurisdiction, and to substitute its judgment for that of the California legislature.

On January 23, 1979, the petitioner, R.R. GABLE, INC. [hereinafter "Gable"],

filed a lawsuit in the California Superior Court for Los Angeles County against the respondents, DALE BURROWS and LYNN BURROWS. The action was to recover a commission allegedly owed to Gable by the Burrows and others. Other defendants were joined in the California proceeding, but they are not parties to this petition.

The Burrows were served with the summons and complaint by certified mail on February 2, 1979. In response, they sent a letter to the clerk of the California Superior Court denying some of the allegations of the complaint. The clerk refused to file the letter as an answer, because it did not conform to the requirements of Superior Court Rule 201, and sent the Burrows a standard form letter informing them that they must comply with certain requirements concerning the filing of an original will. The Burrows then returned

their previous letter, stating in another letter that the clerk's response did not seem to apply to their situation.

On February 23, 1979, the Deputy Clerk for the Superior Court of Los Angeles wrote to the Burrows and informed them again that their letter was insufficient as an answer to the complaint because it was not properly presented in pleading form on 28-line paper. The clerk also advised the Burrows that their answer must be accompanied by a $36 appearance fee, and that if they did not answer within 30 days from the date they were served, a default judgment could be entered against them.

In response to the letter of February 23, the Burrows again wrote to the clerk explaining that they could not afford to pay the appearance fee and hire an attorney to assist them, as the clerk had recommended. The record does not reflect that the Burrows

specifically requested a waiver of the appearance fee and the 28-line pleading requirement, as they could have done pursuant to Superior Court Rule 985. Nevertheless, the Washington Superior Court made a finding of fact that the California Superior Court clerk refused to waive these procedural requirements, and the Washington Court of Appeals likewise assumed that a specific waiver request had been submitted by the Burrows.

On June 7, 1979, Gable requested the California Superior Court to enter a default judgment against the Burrows, and the court did so on that date. Neither Gable nor the court clerk notified the Burrows of the application for the default judgment because notification of defendants in such cases is not required by Cal. Civ. Proc. Code §§ 585-587 (West 1976 & Supp. 1982).

On December 20, 1979, Gable filed its California judgment in Island County in the State of Washington, where the Burrows reside, pursuant to the Uniform Enforcement of Foreign Judgments Act, Wash. Rev. Code §§ 6.36 et seq. (Supp. 1982). Soon thereafter, the Burrows filed a motion to stay or vacate Gable's foreign judgment. At a hearing on the matter, the Washington Superior Court found that the California Superior Court clerk had refused to waive the pleading and appearance fee requirements in the Burrows' case, and had refused to file the Burrows' letter as an answer. Additionally, the court found that the clerk had never returned the Burrows' letter, thus leading the Burrows to assume that it had been filed as an answer. Based on these facts and on the failure of the clerk to notify the Burrows of Gable's request for a default judgment, the Washington Superior

Court held that the California Superior Court had denied the Burrows due process of law, and therefore the California default judgment was not entitled to full faith and credit in Washington. For this reason, the court vacated the foreign judgment.

At the hearing before the Washington Superior Court, Gable raised the federal questions it now wishes this Court to consider. The court called upon each party to submit briefs and then argue the law governing the Burrows' request to vacate the California judgment. During oral argument, counsel for Gable urged the court to follow the full faith and credit requirement and refrain from tampering with the California judgment. Nevertheless, the court refused to accord the judgment full faith and credit. See A-11 to A-14.

Gable appealed the decision to the Washington Court of Appeals, Division One,

which affirmed the Superior Court's refusal to enforce the California judgment. The appellate court concluded that the California Superior Court clerk's refusal to file the Burrows' letter as an answer, and failure to notify the Burrows of Gable's application for default judgment, denied the Burrows their due process right to a meaningful opportunity to be heard, and therefore the California judgment was not entitled to full faith and credit.

Counsel for Gable raised the federal full faith and credit question at the appellate level by assigning error to the trial court's conclusion that the California judgment was not entitled to recognition in Washington, and by briefing and arguing the issue before the appellate court. Nonetheless, the court of appeals affirmed the trial court's decision. See A-18 to A-21.

Subsequently, Gable motioned the Washington Court of Appeals for a rehearing, but the court denied the motion on September 9, 1982. Gable then petitioned the Supreme Court of Washington to review the appellate court's decision, raising the federal full faith and credit issue, but the court denied the petition on December 3, 1982. On February 17, 1983, Justice Rehnquist of this Court issued an order extending the time for Gable to file a Petition for Writ of Certiorari to and including April 3, 1983. This petition was timely filed.

ARGUMENT

I.

THE DECISION OF THE WASHINGTON COURT OF APPEALS CONFLICTS WITH DECISIONS OF THE UNITED STATES SUPREME COURT CONCERNING THE MANDATE OF THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION.

In R.R. Gable, Inc. v. Burrows, 32 Wash. App. 749, 649 P.2d 177 (1982), the Court of Appeals of Washington held that the default judgment obtained by the petitioner, R.R. Gable, Inc., against the respondents, Dale Burrows and Lynn Burrows, in the California Superior Court for the County of Los Angeles was not entitled to full faith and credit in the State of Washington, despite the fact that the California court had jurisdiction over both the subject matter and the parties, and had followed all the applicable rules of California procedure in the conduct of the suit. In so holding, the Washington Court of Appeals impermissibly

deviated from the decisions of the United States Supreme Court concerning the mandate of the full faith and credit clause of the United States Constitution.

Article IV, § 1 of the Constitution provides:

> Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Congress has exercised its constitutional authority to prescribe the effect of judicial decisions. 28 U.S.C. § 1738 provides in relevant part: "[J]udicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of [the] State . . . from which they are taken." The purpose of the full faith and credit clause and the

federal statute is to help weld the independent states into a nation by giving judgments within the jurisdiction of the rendering state the same res judicata effect in other states as they have in the forum state. E.g., Johnson v. Muelberger, 340 U.S. 581, 584 (1951); Williams v. North Carolina, 317 U.S. 287, 295 (1942).

This Court has held consistently that the full faith and credit clause requires each state of the Union to give effect to official judgments of other states, provided that the rendering state had jurisdiction over the parties and the subject matter. The other states may not inquire into the merits of the suit, the logic or consistency of the decision, or the validity of the legal principles upon which the judgment was based. E.g., Nevada v. Hall, 440 U.S. 410, 421 (1979); Durfee v. Duke, 375 U.S. 106, 109 (1963); Milliken

v. Meyer, 311 U.S. 457, 462 (1940); Mills v. Duryee, 11 U.S. (7 Cranch) 481, 484 (1813).

Because the recognition of sister state judgments is vital to the effective administration of justice in our national system, this Court has created very few exceptions to the constitutional mandate, and those exceptions are narrowly drawn. As Justice Douglas explained in Williams v. North Carolina:

> Some exceptions have been engrafted on the rule laid down by Chief Justice Marshall [in Hampton v. M'Connel, 16 U.S. (3 Wheat.) 234 (1818)]. But as stated by Mr. Justice Brandeis in Broderick v. Rosner, 294 U.S. 629, 642 [1935] . . . "the room left for the play of conflicting policies is a narrow one." So far as judgments are concerned the decisions, as distinguished from dicta, show that the actual exceptions have been few and far between . . . . For this Court has been reluctant to admit exceptions in case of judgments rendered by the courts of a sister state, since the

> "very purpose" of Art. IV, § 1 was "to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation." Milwaukee County v. M.E. White Co., [296 U.S. 268, 276-77 (1935)].

317 U.S. at 294-95 (1942) (footnotes omitted; emphasis in original).

One of the exceptions created by this Court to the full faith and credit requirement concerns the jurisdiction of the court rendering the original judgment. To be entitled to full faith and credit, the judgment must have been rendered by a court having jurisdiction over both the subject matter of the suit and the parties involved. All of the due process requirements for obtaining personal jurisdiction over the parties, such as sufficient contacts with the forum and adequate service of process must have been met; otherwise the judgment

is not entitled to full faith and credit. As this Court recently explained in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 290, 291 (1980):

> A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. Pennoyer v. Neff, 95 U.S. 714, 732-33 . . . (1878). Due process requires that the defendant be given adequate notice of the suit, Mullane v. Central Hanover Trust Co., 339 U.S. 306, 313-314 . . . (1950), and be subject to the personal jurisdiction of the court, International Shoe Co. v. Washington, 326 U.S. 310 . . . (1945).

Accord Nevada v. Hall, supra, 440 U.S. at 421; Griffin v. Griffin, 327 U.S. 220, 228-29 (1946); Williams v. North Carolina, supra, 317 U.S. at 303; Adam v. Saenger, 303 U.S. 59, 62 (1938); Old Wayne Mutual Life Association v. McDonough, 204 U.S. 8, 15 (1907); National Exchange Bank v. Wiley, 195 U.S. 257, 270 (1904). As a necessary incident to this exception, this Court has

held that when a party who has obtained a judgment in one state seeks to enforce it in another state, the court of the other state may consider whether the court that rendered the original judgment had jurisdiction of the suit and the parties. E.g., Hanson v. Denckla, 357 U.S. 235, 255-56 (1958); Milliken v. Meyer, supra, 311 U.S. at 462; Adam v. Saenger, supra, 303 U.S. at 62.

For example, in Adams v. Saenger, the petitioner obtained a California default judgment against a Texas corporation in a cross-action commenced by service of the cross-complaint upon the corporation's attorney of record. The corporation motioned the court to open the default judgment and allow it to defend the suit, but the motion was denied. When the petitioner sought to enforce the California judgment in Texas, the courts of Texas refused to recognize the

judgment because they thought it had been obtained in violation of due process requirements. Specifically, the Texas courts believed that the California court had not had personal jurisdiction over the Texas corporation because, in the Texas courts' view, California law did not authorize service of a cross-complaint on a party's attorney of record. 303 U.S. at 61-62. In reversing the decision of the Texas Court of Civil Appeals, this Court found that the practice of serving a cross-complaint on a party's attorney of record was authorized by California law, and, because the petitioner had followed the rules of California procedure in serving the corporation, the California court had had personal jurisdiction over the corporation in the cross-action. Therefore, the Texas courts were required to give full faith and credit to the California default judgment.

This Court has limited the "due process" exception to the full faith and credit requirement to cases in which the court rendering the original judgment lacked jurisdiction. See, e.g., Griffin v. Griffin, supra; Williams v. North Carolina, supra; Milliken v. Meyer, supra; Baker v. Baker, Eccles & Co., 242 U.S. 394 (1917); Wetmore v. Karrick, 205 U.S. 141 (1907); Old Wayne Mutual Life Association v. McDonough, supra; National Exchange Bank v. Wiley, supra. Admittedly, some of the decisions contain broad language that, removed from the context of the case, seems to authorize a state court to refuse to recognize a sister state judgment if the court thinks the proceedings in the sister state were lacking in due process in any respect. Chief Justice Stone in Griffin v. Griffin wrote that "[a] judgment obtained in violation of procedural due process is

not entitled to full faith and credit when sued upon in another jurisdiction." 327 U.S. at 228-29. Similarly, Justice Harlan in Old Wayne Mutual Life Association v. McDonough wrote:

> The constitutional requirement that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State is necessarily to be interpreted in connection with other provisions of the Constitution, and therefore no State can obtain in the tribunals of other jurisdictions full faith and credit for its judicial proceedings if they are wanting in the due process of law enjoined by the fundamental law.

204 U.S. at 15. Both cases involved judgments that had been rendered without personal jurisdiction over the defendants, and the precise holding of each was that a judgment obtained without personal jurisdiction violated fundamental due process requirements and thus was not entitled to full faith and credit. Despite the broad language of these opinions, this Court has never held

specifically that, when a party seeks to enforce in one state a judgment rendered by another state's court that had jurisdiction of the case and the parties, a court in the state in which the party seeks enforcement may inquire into the propriety of other procedural aspects of the sister state's proceedings.

Notwithstanding the decisions of this Court limiting the "due process" exception to cases in which the court rendering the original judgment lacked jurisdiction, the Washington Court of Appeals in this case refused to recognize the California judgment obtained by the petitioner, even though the California court had jurisdiction of the subject matter and the parties, and the entire proceeding was conducted in conformity with the rules of California procedure. In the words of the court:

> [E]ven though the California court had jurisdiction over the parties due to adequate notice of the complaint, the judgment is not entitled to full faith and credit if the defendant was denied a meaningful opportunity to defend against the claim upon which the judgment is based. Restatement (Second) of Conflict of Laws, § 25, comment h, and § 104 (1969); see Overmyer v. Eliot Realty, 83 Misc. 2d 694, 371 N.Y.S.2d 246, 259 (1975).

32 Wash. App. at 752, 649 P.2d at 179. Thus the court assumed that it had the power to inquire into the procedural aspects of the California suit beyond the question of jurisdiction. Such a conclusion is in direct conflict with the decisions of this Court that have limited the authority of courts, in deciding whether to recognize another state's judgment, to examining only the issue of the other state court's jurisdiction. See discussion, supra at 20-22.

Erroneously assuming that it had the power to examine all procedural aspects

of the California suit, the Washington Court of Appeals found the manner in which the clerk of court handled the Burrows' attempts to answer the petition wanting in due process. The clerk's letter of February 23, 1979, had informed the Burrows that their letter was insufficient as an answer because it had not been properly presented on 28-line pleading paper and had not been accompanied by an appearance fee, as required by Cal. Gov't Code §§ 26826, 70053 et seq. (West 1976 & Supp. 1982), and Superior Court Rule 201. In addition, the letter warned the Burrows that if they did not file a proper answer, accompanied by the fee, within 30 days from the date of service, they would be subject to a default judgment. Despite the clerk's clear explanation of what the rules of court required of the Burrows, and what the consequences of not filing an answer could be, the Washington

court nevertheless held that the clerk's failure to waive the filing fee and pleading paper requirement denied the Burrows due process of law. Furthermore, even though the rules of California procedure do not require a court to notify a party that an application for a default judgment against it has been made, see Cal. Civ. Proc. Code §§ 585-587 (West 1976 & Supp. 1982), the Washington court concluded that the failure to notify the defendants in this particular case was a denial of due process. 32 Wash. App. at 753-54, 651 P.2d at 180. In sum, the Washington Court of Appeals held that a default judgment obtained in complete compliance with the rules of California procedure nevertheless violated the due process rights of the defendants, and thus was not entitled to full faith and credit.

The "due process" exception to the constitutional requirement of full faith and

credit was never intended by this Court to be applied so broadly. As interpreted by the Washington Court of Appeals, this exception enables a court to conclude that a sister state's judgment, obtained in compliance with the state's rules of procedure, is nevertheless not entitled to full faith and credit because the other state's rules of procedure do not adequately safeguard the due process rights of defendants. Under this interpretation, the due process exception becomes a means by which one state may hold that another state's rules of procedure violate the Constitution. This Court has never held that the due process exception confers such power on courts asked to recognize a sister state's judgment. On the contrary, this Court has held that a court may examine the other state's proceedings only insofar as is necessary to determine whether the court had jurisdiction

of the subject matter and the parties, and if the court had jurisdiction, the court in the state where the judgment is sought to be recognized must accord the judgment full faith and credit. Nevada v. Hall, supra; Griffin v. Griffin, supra; Williams v. North Carolina, supra; Milliken v. Meyer, supra; Adam v. Saenger, supra; Roche v. McDonald, 275 U.S. 449 (1928); Old Wayne Mutual Life Association v. McDonough, supra.

Because the decision of the Washington Court of Appeals conflicts directly with decisions of this Court and sets a dangerous precedent greatly enlarging the scope of the established due process exception to the full faith and credit requirement, this honorable Court should issue a writ of certiorari to the Court of Appeals of Washington to resolve this matter.

II.

IN ENLARGING THE SCOPE OF AN ESTABLISHED EXCEPTION TO THE REQUIREMENTS OF THE FULL FAITH AND CREDIT CLAUSE, THE WASHINGTON COURT OF APPEALS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT SHOULD BE SETTLED BY THE UNITED STATES SUPREME COURT.

In R.R. Gable, Inc. v. Burrows, supra, the Court of Appeals of Washington held that, in determining whether to accord full faith and credit to a sister state's judgment, a court could inquire into the propriety of procedural aspects of the out-of-state lawsuit beyond the issue of jurisdiction. In so holding, the Washington court departed from United States Supreme Court precedent and greatly enlarged the scope of the established "due process" exception to the constitutional requirement of full faith and credit. A question so important to the administration of justice in our federal system properly should be decided by this Court, which is "the final arbiter when the

question is raised as to what is a permissible limitation on the full faith and credit clause." Johnson v. Muelberger, supra, 340 U.S. at 585; Williams v. North Carolina, supra, 317 U.S. at 302.

Article IV, § 1 of the United States Constitution requires each state to give full faith and credit to the public acts, records, and judicial proceedings of every other state. This Court has created exceptions to the full faith and credit mandate, but the exceptions are few and narrowly drawn. See Williams v. North Carolina, supra, 317 U.S. at 294-95. One of the exceptions allows courts to refuse to recognize a judgment of another state's court if the court rendering the judgment lacked jurisdiction of either the subject matter or the parties to the suit. This "due process" exception allows courts to examine matters of fact or law upon which the

jurisdiction of the sister state court depended, but which were not litigated in that court. E.g., World-Wide Volkswagen Corp. v. Woodson, supra, 444 U.S. at 291 (1980); Nevada v. Hall, supra, 440 U.S. at 421 (1979); Hanson v. Denckla, supra, 357 U.S. at 255-56; Griffin v. Griffin, supra, 327 U.S. at 228-29; Milliken v. Meyer, supra, 311 U.S. at 462; Adam v. Saenger, supra, 303 U.S. at 62.

Although this Court has stated in general terms that "[a] judgment rendered in violation of due process is void and is not entitled to full faith and credit elsewhere," World-Wide Volkswagen Corp. v. Woodson, supra, 444 U.S. at 291, this Court has never held specifically that one court, in deciding whether to give full faith and credit to another state's judgment, may inquire into the propriety of procedural aspects of the out-of-state proceeding

beyond the issue of whether the court rendering the original judgment had jurisdiction of the subject matter and the parties. Apart from the requirement of subject matter jurisdiction, the "due process" referred to in the decisions cited above included, and was limited to: (1) the requirement that the defendant be subject to the personal jurisdiction of the court, i.e., that he or she have sufficient "minimum contacts" with the forum state; and (2) the requirement that the defendant be given adequate notice of the suit. E.g., World-Wide Volkswagen Corp. v. Woodson, supra, 444 U.S. at 291; Griffin v. Griffin, supra, 327 U.S. at 228. Both requirements must be met in order for a court to obtain personal jurisdiction over a defendant. E.g., Mullane v. Central Hanover Trust Co., 339 U.S. 306, 313-14 (1950); International Shoe Co. v. Washington, 326 U.S. 310 (1945).

In all the cases in which this Court has held that a particular judgment was not entitled to full faith and credit in other jurisdictions because the judgment was obtained in violation of due process requirements, the denial of due process consisted of a lack of personal jurisdiction over the defendants. This Court has never applied the "due process" exception to procedural aspects other than the issue of jurisdiction, and, furthermore, has never held that other courts may do so.

The Washington Court of Appeals, in enlarging the scope of the "due process" exception to enable the court to consider all the procedural aspects of the California Superior Court proceeding, relied upon the Restatement (Second) of Conflict of Laws as authority to do so. R.R. Gable, Inc. v. Burrows, supra, 32 Wash. App. at 752, 649 P.2d at 179. Section 104 of the Restatement provides:

> Due process forbids the rendition of a judgment within the United States unless the State of rendition has judicial jurisdiction (see § 24) and unless the parties have been given adequate notice and adequate opportunity to be heard (see § 25). A judgment rendered in violation of these requirements is void in the State of rendition itself, and due process forbids the recognition and enforcement of such a judgment in sister States (see § 92).

Restatement (Second) of Conflict of Laws § 104 comment a (1971). Comment h to § 25 explains:

> If the defendant was denied a reasonable opportunity to be heard, a judgment rendered against him will be void in the state of rendition itself, if this state is a State of the United States, and in any event will not be recognized or enforced in other states. This will be true even though the state had judicial jurisdiction over the defendant and even though he was given proper notice of the action. Notice to a defendant of the claim which is being made against him is of no value to him if he is denied the opportunity to defend against the claim. This may happen when in the particular

> action the conduct of the court is so flagrant as to deny the defendant the opportunity to be heard, such as when the court arbitrarily strikes out an answer which the defendant makes to the claim and renders judgment against him. The same is true when, although the defendant is given notice of the action, a judgment is rendered against him so shortly thereafter that he has no adequate opportunity to interpose a defense.

Id. § 25 comment h. Thus, although this Court has never so held, the Restatement appears to take the position that one state may refuse to recognize a judgment of another state on due process grounds even though the court of rendition has jurisdiction of both the subject matter and the parties.

Relying on the Restatement as authority for enlarging the "due process" exception to include issues other than jurisdictional ones, the Washington Court of Appeals held that the California Superior Court had violated due process requirements in two

respects, despite the court's having complied with the applicable rules of California procedure. Specifically, the Washington court found that the failure of the clerk of the California court to file the Burrows' informal letter as an answer and waive the appearance fee, and the failure of the court to notify the Burrows that the plaintiff had applied for a default judgment against them, denied the Burrows due process of law. Consequently, the California judgment was not entitled to full faith and credit. 32 Wash. App. at 753-54, 649 P.2d at 180. Thus, the Washington Court of Appeals enlarged the "due process" exception to such a degree that it was able to hold that a California judgment, obtained in complete compliance with the rules of California procedure, nevertheless violated due process requirements and was not entitled to recognition elsewhere.

Quite apart from the question of the correctness of the position taken by the Restatement and the Washington Court of Appeals, any enlargement of the "due process" exception to the full faith and credit requirement should be accomplished by this Court. A constitutional mandate of such importance as the full faith and credit clause should not be cut back by the Washington Court of Appeals or by the Restatement. If further limitation of the full faith and credit clause is necessary to the administration of justice, this Court alone is the proper body to make such a decision. For this reason, this honorable Court should issue a writ of certiorari to the Washington Court of Appeals for resolution of this matter.

CONCLUSION

For the foregoing reasons, the petitioner, R.R. Gable, Inc., respectfully requests this Court to issue a writ of certiorari to the Court of Appeals of Washington, Division One.

Respectfully submitted,

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October Term, 1982

R. R. GABLE, INC., a CALIFORNIA REAL ESTATE CORPORATION,
Petitioner,

v.

DALE BURROWS and LYNN BURROWS, husband and wife,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF WASHINGTON

APPENDIX

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR ISLAND COUNTY

R. R. GABLE, INC., a real estate corporation, Judgment Creditor, vs. DALE BURROWS and LYNN BURROWS, husband and wife, Judgment Debtors.	NO. 11608 FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER having come on for a final hearing before Judge RICHARD PITT on July 11, 1980, and the Judgment Creditor appearing through their attorney CHRISTON SKINNER, and the Judgment Debtors appearing through their attorney JACOB COHEN and the Judgment Debtors appearing personally, and the Court having reviewed the files and records herein and the Judgment Debtor's motion to stay and vacate foreign judgment and the affidavits of both

the Judgment Creditor and Judgment Debtors contained within the file, and the Court having heard the arguments of counsel, now therefore, the Court makes the following

FINDINGS OF FACT

I.

The Judgment Debtors DALE BURROWS and LYNN BURROWS, husband and wife, are residents of Island County, Washington. The Judgment Creditor R. R. GABLE, INC., is a California corporation.

II.

In November, 1978, the Judgment Debtors, in their capacity as purchasers, entered into an earnest money agreement wherein the Judgment Creditors were the real estate agents for the sellers for the sale of a home in Los Angeles County, California. Said earnest money agreement to purchase was subject to

"buyer to qualify for 80% conventional loan." The Judgment Debtors made application with American Savings & Loan Association, a California savings and loan, and received a letter on December 4, 1978 from the said Savings & Loan Association advising the Judgment Debtors that "we are unable to extend credit to you at this time" and "restrictive loan program due to loan volume." After the said rejection of the loan application, the Judgment Debtors became unable to qualify to purchase the home on the earnest money agreement. [Court's deletions as in original.]

III.

On or about January 23, 1979, the Judgment Creditor filed suit against the Judgment Debtor, among others, for the anticipated real estate commission involved with the aforesaid earnest money agreement. The complaint by the Judgment Creditors against

the Judgment Debtors is not based on any known principal of law, is totally groundless, and appears to have been filed strictly for the purposes of harassing the Judgment Debtors. [Court's deletions as in original.]

IV.

A copy of the California Summons and Complaint, addressed to DALE BURROWS and LYNN BURROWS, was served upon LYNN BURROWS at her residence in Oak Harbor, Washington by certified mail, return receipt requested, on February 2, 1979. Only one copy of the Summons and Complaint was mailed to both DALE BURROWS and LYNN BURROWS at their residence in Oak Harbor, Washington and a copy of the Summons and Complaint was never mailed to DALE BURROWS, individually, nor signed for by him by certified mail, return receipt requested. On February 2, 1979, and at all times hereafter, DALE BURROWS and LYNN

BURROWS were residents of the State of Washington.

IV.

On the face of the California Summons, it states in paragraph 2 that "NOTICE TO THE PERSONS SERVED: You are served as an individual defendant: Lynn Burrows".

V.

On or about February 2, 1979, the Judgment Debtors prepared a written answer to the complaint and mailed the same to the California Superior Court in which the Summons and Complaint had been filed.

VI.

On or about February 15, 1979, the BURROWS received from the Clerk of the Superior Court in which the Summons and Complaint had been filed a standard form letter, dated February 7, 1979, returning the answer, requesting a $54.00 dollar filing fee, indi-

cating that the answer must be on "legal 28 line paper" and incorrectly stating that the original Will must be presented at the time of filing the petition. The Judgment Debtors' returned the answer on the same date to the California Clerk of Court with a cover letter indicating as follows:

> "You sent us back, our response to summons dated Jan. 23, 1979 regarding case number NWC 71424, with a cover letter form E141. That form does not seem to apply to our situation. Therefore, we are enclosing with this letter, our original response to the summons which names us as defendants in civil lawsuit. Your help is appreciated."

VI[redacted].

On or about February 23, 1979, the Clerk of the California Superior Court again returned the answer to the Judgment Debtors to the complaint with a cover letter stating that the letter could not be accepted by the Court as a formal answer to the complaint and

that the answer must be prepared on 28 line pleading paper and accompanied by a $36.00 dollar appearance fee. Said letter of February 23, 1979 was received by the Judgment Debtors and the Judgment Debtors' responded thereto on March 17, 1979 by once again returning the answer to the Clerk of Court with a written request that the requirement for the 28 line pleading paper and the appearance fee be waived. The answer mailed by the Judgment Debtors to the California Clerk of Court on March 17, 1979 was never returned to the Judgment Debtor by the United States Postal Service and the Judgment Debtors assumed that the answer had been received and filed by the California Clerk of Court. The California Clerk of Court apparently refused to file the answer mailed by the Judgment Debtors due to the fact that no filing fee was included and the

answer was not prepared on 28 line pleading paper, and the said Clerk of Court refused to waive the aforesaid procedural requirements in order to allow Judgment Debtors to file their answers in order to prevent the entry of a default judgment.

VII.

The Judgment Creditors requested and received a default judgment in the California Superior Court on November 28, 1979 in the amount of $5,117.69. No notice of the request of the entry of the said default judgment was given by the Judgment Creditor to the Judgment Debtors.

VIII

The California judgment was filed with the Island County Clerk of Court by the Judgment Creditors on December 20, 1979 in accordance with the procedures of the Uniform Enforcement of Foreign Judgment's Act.

From the foregoing Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and subject matter of this action.

2. Both the Judgment Debtor DALE BURROWS and LYNN BURROWS were properly served with the California Summons and Complaint for Superior Court should be vacated due to the lack of due process of law provided to the Judgment Debtor BURROWS. ~~The Judgment Creditors will not be prejudiced by the vacation of the said judgment as he said Judgment Creditors have ample time within the statute of limitations to refile their California cause of action.~~ [Court's deletions as in original.]

DONE IN OPEN COURT this 19 day of Sept., 1980.

/s/ Richard T. Pitt
JUDGE

Presented by:

/s/ Jacob Cohen
JACOB COHEN
Attorney for Judgment
Debtor Burrows

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR ISLAND COUNTY

R. R. GABLE, INC., a real estate corporation, Judgment Creditor, vs. DALE BURROWS and LYNN BURROWS, husband and wife, et al., Judgment Debtors.	)	NO. 11608 JUDGMENT AND ORDER VACATING FOREIGN JUDGMENT

THIS MATTER having come on for hearing before Judge RICHARD PITT on March 7, 1980, and the Judgment Creditor appearing through attorney, CHRISTON SKINNER, and the Judgment Debtors appearing through their attorney, JACOB COHEN, and the Judgment Debtors appearing personally, and the Court having reviewed the files and records herein and the Motion to Stay and Vacate Foreign Judgment, and the Court finding that the Judgment

Debtors, as moving parties, have demonstrated a prima facie defense to the California default judgment, and the Court having the authority under R.C.W. 6.36 and Superior Court Civil Rules 60(b) to vacate the judgment, now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment herein is vacated and that neither party is awarded their costs and disbursements herein.

DONE IN OPEN COURT this 19 day of September, 1980.

_____
JUDGE

Presented by:

_____
JACOB COHEN
Attorney for Judgment Debtors

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

R. R. GABLE, Inc., a California Real Estate Corporation, Appellant, v. DALE BURROWS and LYNN BURROWS, husband and wife, Respondents, and JOHN DOUGLAS GERMAN and PATRICIA GERMAN: and GRIBIN VON DYL and ASSOCIATES, Inc., a Corporation, Defendants.	NO. 9349-5-I DIVISION ONE Filed Aug. 4, 1982

RINGOLD, J. -- R.R. Gable, Inc. appeals a judgment vacating and refusing to enforce a California default decree obtained against Dale and Lynn Burrows. We affirm the trail court's refusal to enforce the California judgment.

On February 2, 1979, the Burrows, resi-

dents of Washington, were served with a copy of a California summons and complaint filed by Gable. The action sought payment of a commission allegedly owed to Gable. In response, the Burrows sent a letter to the Los Angeles County Superior Court denying the allegations in the complaint. They stated that the commission was contingent on their receiving a loan on the property in question and their loan application was rejected. The clerk of the court refused to file this letter as an answer and sent the Burrows a standard form letter informing them that they must comply with certain requirements concerning the filing of an original will. The Burrows returned their previous letter, stating in a new letter that the court's response did not seem to apply to their situation. The clerk of the court again refused to accept their letter as a formal answer and

informed the Burrows by mail that they must prepare their answer on 28 line pleading paper and pay a $36 appearance fee. The clerk's letter also informed the Burrows that if their answer were not filed within 30 days from the date they were served, a default could be taken. In response, the Burrows stated they could not afford to comply, and they requested that the 28 line pleading paper and appearance fee requirements be waived. They mailed this request on March 17, 1979.

The trial court found that the clerk of the court refused to waive the pleading and appearance fee requirements and apparently refused to file the Burrows' answer. The court also found that the clerk never returned the answer to the Burrows, and they assumed it had been filed. On November 28, 1979, Gable received a default judgment in

the sum of $5,117.69. No notice of the request for the entry of the default judgment was given to the Burrows.

On December 20, 1979, Gable filed the California judgment with the Island County Superior Court clerk pursuant to the Uniform Enforcement of Foreign Judgments Act. RCW 6.36. The trial court granted the Burrows' motion to vacate the foreign judgment on the ground that they were denied due process of law by the failure of the California court to file their answer and waive the appearance fee and pleading paper requirements. Although not included in the written finding and conclusions, the court stated in its oral opinion that its decision was also based upon the failure to give the defendants notice of the request for a default judgment.

Gable contends that the full faith and credit clause of the United States Consti-

tution[1] requires every state to give a judgment at least the res judicata effect the judgment has in the state which rendered it and the trial court erred by refusing to enforce a California judgment that was entered by a court having both personal and subject matter jurisdiction. Durfee v. Duke, 375 U.S. 106, 11 L. Ed. 2d 186, 84 S. Ct. 242 (1963); Williams v. Steamship Mut. Underwriting Ass'n, 45 Wn.2d 209, 273 P.2d 803 (1954); Industrial Finance Co. v. Lovell, 9 Wn. App. 829, 515 P.2d 1304 (1973). Gable overlooks certain exceptions to the broad general rule of recognition mandated by the full faith and credit clause. One such exception is for judgments rendered in violation of the due process requirement that a defendant receive adequate notice and be given a meaningful opportunity to be heard. Griffin v. Griffin, 327 U.S. 220, 90 L. Ed.

635, 66 S. Ct. 556 (1945); Perry v. Perry, 51 Wn.2d 358, 318 P.2d 968 (1957). Thus, even though the California court had jurisdiction over the parties due to adequate notice of the complaint, the judgment is not entitled to full faith and credit if the defendant was denied a meaningful opportunity to defend against the claim upon which the judgment is based. Restatement (Second) of Conflict of Laws, § 25, comment h, and § 104 (1969); see Overmyer v. Eliot Realty, 83 Misc. 2d 694, 371 N.Y.S. 2d 246, 259 (1975).[2]

Gable next contends that the procedural irregularities alleged here do not amount to a violation of constitutional due process. It is Gable's view that due process does not address the question of whether the letters mailed by the defendants should be treated as an appearance by the California court. Contending that a party may not attack another

state's judgment on the basis of this type of procedural irregularity, Gable argues that unless the judgment has been suspended or set aside by the jurisdiction rendering it, it must be enforced in Washington. Allard v. La Plain, 147 Wash. 497, 266 P. 688 (1928), cert. denied, 280 U.S. 527, 74 L. Ed. 594, 50 S. Ct. 88 (1929); Jones v. Roach, 118 Ariz. 146, 575 P.2d 345 (Ct. App. 1977).

Gable has not assigned error to the trial court's findings of fact and we are bound by the unchallenged findings. Hindquarter Corp. v. Property Dev. Corp., 95 Wn.2d 809, 631 P.2d 923 (1981). It is therefore the established fact of this case that the California trial court did not inform the Burrows of its denial of their request to waive the filing fee and the pleading paper requirement. It is also an established fact that the California court did not return the

Burrows' papers and never informed them that it had failed to file their letter as an answer. We hold that the constitutional right to a meaningful opportunity to be heard was violated by these procedures. See McClintock v. Serv-Us Bakers, 103 Ariz. 72, 436 P.2d 891 (1968), Restatement (Second) of Conflict of Laws, § 25, comment h (1969). As held by our Supreme Court in Esmieu v. Schrag, 88 Wn.2d 490, 563 P.2d 203 (1977), an order is void as violative of due process where based on a hearing for which there was no adequate notice or an opportunity for a party to be heard.[3]

We recognize that due process permits a default judgment against a non-answering defendant to be entered without additional notice on the theory that a properly served defendant has been given adequate notice to allow an intelligent decision on whether to

appear or default. Ordinarily, having been given notice of the action, the defendant may elect to acquiese in a default because of the security of knowing the judgment cannot exceed the demand in the complaint. Sheldon v. Sheldon, 47 Wn.2d 699, 289 P.2d 335 (1955); Rippe v. Doran, 4 Wn. App. 952, 486 P.2d 107, 45 A.L.R. 3d 1330 (1971). This rationale does not apply here because the defendants took action to contest the complaint and were denied notice of the refusal to file their answer and were not given a meaningful opportunity to be heard. Restatement (Second) of Conflict of Laws, supra. Regardless of whether their letters constitute a properly filed answer in California, they revealed the Burrows' decision to contest the allegations in the complaint. The defendants accordingly had a due process right to notice of the refusal to waive fil-

ing requirements and other steps in the proceedings which could substantially affect their interests. Griffin; Esmieu; Perry; Kessler; McClintock.

Affirmed.

/s/ Ringold, J.
J. RINGOLD

WE CONCUR:

/s/ Andersen, C.J.
C.J. ANDERSEN

/s/ Swanson, J.
J. SWANSON

FOOTNOTES:

1. Article 4, section 1 of the United States Constitution provides: "Full faith and credit shall be given in each state to the . . . judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such . . . proceedings shall be proved, and the effect thereof."

In 28 U.S.C. § 1738, Congress has exercised its constitutional authority to prescribe the effect of judicial decisions. The statute provides in relevant part: "[J]udicial proceedings . . . shall have the same full faith and credit in every court

within the United States . . . as they have by law or usage in the courts of [the] State . . . from which they are taken."

2. Restatement (Second) of Conflict of Laws § 104 (1969) states: "A judgment rendered without judicial jurisdiction or without adequate notice or adequate opportunity to be heard will not be recognized or enforced in other states." Comment (a) to this provision refers to Restatement (Second) of Conflict of Laws, § 25 (1969). Comment (h) to section 25 provides:

"If the defendant was denied a reasonable opportunity to be heard, a judgment rendered against him will be void in the state of rendition itself, if this state is a State of the United States, and in any event will not be recognized or enforced in other states. This will be true even though the state had judicial jurisdiction over the defendant and even though he was given proper notice of the action. Notice to a defendant of the claim which is being made against him is of no value to him if he is denied the opportunity to defend against the claim. This may happen when in the particular action the conduct of the court is so flagrant as to deny the defendant the opportunity to be heard, such as when the court arbitrarily strikes out an answer which the defendant makes to the claim and renders judgment against him. The same is true when, although the defendant is given notice of the action, a judgment is rendered against him so shortly thereafter that he has no adequate opportunity to interpose a defense."

3. Allard v. La Plain, 147 Wash. 497, 266 P. 688 (1928), does not support a con-

trary result. It gave full faith and credit to a sister state judgment that was challenged as fraudulent due to alleged perjury. It had nothing to do with whether the full faith and credit clause permits a court to refuse to enforce a judgment entered without giving the defendant a meaningful opportunity to be heard. Jones v. Roach, 118 Ariz. 146, 575 P.2d 345 (Ct. App. 1977) (refusal to vacate for alleged mistake, inadvertence, surprise or excusable neglect) is similarly irrelevant to the due process issue here.

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON

R. R. GABLE, INC., a California real estate corporation Appellant, v. DALE BURROWS and LYNN BURROWS husband and wife, Respondents, and JOHN DOUGLAS GERMAN and PATRICIA GERMAN; and GRIBIN VON DYLE and ASSOCIATES, INC., a corporation, Defendants.	NO. 9349-5-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, R. R. Gable, Inc., having filed its motion for reconsideration herein ahd [sic] the court having determined that it should be denied; Now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same hereby is, denied.

DATED this 9th day of September 1982.

/s/ James J. Andersen
Chief Judge

THE SUPREME COURT
State of Washington
Olympia
98504

December 3, 1982

Mr. Christon Skinner
Attorney at Law
3101 300 Avenue West
Oak Harbor, Washington 98277

Mr. Kenneth A. Manni
Mr. Jacob Cohen
8092 80th Street N.W.
Oak Harbor, Washington 98277

Re: Supreme Court No. 49115-1- Gable v. Burrows
Court of Appeals No. 9349-5-I

Counsel:

The above entitled Petition for Review was considered by the Court on its December 3, 1982, Petition for Review Calendar.

The Petition was denied by order number 109/3 filed on December 3, 1982.

Very truly yours,

/s/

Reginald N. Shriver
Acting Clerk

RNS:lb

SUPREME COURT OF THE UNITED STATES

No. A-694

R. R. GABLE, INC.

Petitioner,

v.

DALE BURROWS, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 3, 1983.

/s/ William H. Rehnquist
Associate Justice of the
Supreme Court of the
United States

Dated this 17th

day of February, 1983

END OF DOCKET